A.F.R.

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HIGH COURT OF CHHATTISGARH AT BILASPUR
S.B. : HON'BLE SHRI JUSTICE VIJAY KUMAR SHRIVASTAVA
CIVIL REVISION NO. 146/2004

PETITIONER : **Nikilesh Benerjee, s/o. late H.C. Benerjee, Advocate, r/o. in front of Maya Institute, Old Nehru School, Choudhary Bada, Moti Para, Quarter No.150-A And 150-B, Ward No.46, Durg (CG).**

versus

Respondent : **Nishithkant Choudhary, s/o. Nekhil Kant by occupation Rt. Director, R/o. c/o. Shubhneel Choudhary, Present address Flat No.8 A/1, Shart Cooperative Housing Society, Kamgarnagar Road Kurla (East) Mumbai -24.**

PRESENT :

Mr. Vivek Sharma, Counsel for the petitioner.

Mr. M.P.S. Bhatia, Counsel for the respondent.

O R D E R

(Passed on 28th June, 2005)

This is a revision filed under Section 23 E of the Chhattisgarh Accommodation Control Act, 1961 (for short, "the Act") against order dated 31/07/2004 passed by the Rent Controlling Authority (for short, "the Authority"), Durg (CG), in Case No. 07/A-90/2003-2004, whereby the application of respondent- Nishithkant Choudhary for recovery of possession of the suit house has been allowed.

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2) Respondent – Nishithkant Choudhary filed an application under Section 23 –A of the Act for an order directing the tenant to put the land lord in possession of the suit accommodation stating that he was retired from Government service on 31/10/2003 and after his retirement he requires the suit house for his residential purpose as no other suitable residential accommodation is available in Durg city. The learned Authority issued notice to the petitioner (tenant), who after service of notice appeared before the Authority, Durg on 27/03/2004 and filed an application under Order 11, Rule 4 of the Code of Civil Procedure (for short, "the Code") along with an affidavit.

3) Petitioner in para 2 of the affidavit stated that the application filed by the respondent is false and against law, therefore, he seeks permission to contest the case. Respondent replied the said application and affidavit stating that the provisions of Order 11, Rule 4 of the Code are not applicable and the affidavit is not an application for permission to contest the case.

4) The Authority in its impugned order held that the petitioner has not filed any application within 15 days from the date of receipt of summons on him for leave to contest the case and instead filed an application under Order 11, Rule 4 of the Code which was not required. Petitioner also filed an affidavit in para 2 of the affidavit he has prayed for permission to contest the case, but has not put forth any sufficient ground. The Authority further held that there is nothing substantial to grant permission to contest the case and accordingly ordered striking out the right of defence of the petitioner. The Authority also held that respondent has retired from Government service on 31/10/2003 and besides

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the suit house he does not have any other accommodation in Durg city and the suit house is required bona fide by him, and accordingly passed the impugned order of eviction.

5) Only contention during argument raised by the petitioner is that the Authority committed a grave error in not allowing the petitioner to defend the case. On the other hand, respondent contended that petitioner did not file application, which is mandatory for obtaining leave to contest the case. Therefore, learned Authority has not committed any error.

6) Section 23-C of the Chhattisgarh Accommodation Control Act, 1961 reads as below:

> *"23-C. Tenant not entitled to contest except under certain circumstances.-(1) The tenant on whom the summons is served in the form specified in the Second Schedule shall not contest the prayer for eviction from the accommodation unless he filed within fifteen days from the date of service of the summons, an application supported by an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Rent Controlling Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or in default of his obtaining such leave, or if such leave is refused, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant. The Rent Controlling Authority shall in such a case pass an order of eviction of the tenant from the accommodation:*
> *Provided that the Rent Controlling Authority may, for sufficient cause shown by the tenant, excuse the delay of the tenant in entering appearance or in applying for leave to defend the application for eviction and where "ex parte" order has been passed, may set it aside.*
>
> *(2) The Rent Controlling Authority shall, within one month of the date of receipt of application, give to the tenant if*

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> *necessary, leave to contest the application, if the application supported by an affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the accommodation on the ground specified in section 23-A."*

7) From bare reading of the above provision, it is apparent that a duty has been cast on the tenant that if he wants to contest the case to apply within 15 days from the date of service of summons on him, by filing an application supported by an affidavit stating the grounds on which he seeks to contest the application for eviction and only ground available to him is that he should disclose the facts as would disentitle the landlord from obtaining an order for the recovery of possession of the accommodation on the ground specified in section 23-A. If tenant did not appear in pursuance of the summons or make default in obtaining leave to contest or if leave to contest is refused, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the Authority shall in such a case pass an order of eviction.

8) It is crystal clear that in absence of leave to contest the case tenant has no right to raise any question, neither he can raise the dispute regarding relation-ship of the landlord and tenant nor he can challenge the bona fide requirement of the landlord and the Authority has no other option except to treat the statement made by the landlord in the application as admitted by the tenant and to pass order accordingly.

09) It is contended on behalf of the petitioner that no doubt, petitioner in specific term, has not filed any application for permission to contest the case, but in para 2 of the affidavit, filed by him, he has stated that the case filed by respondent is false and in contravention of law, therefore, he should be permitted to contest the case, as such this affidavit should have been treated as application. On the other hand, respondent contended that law requires specific application with specific ground and that too supported by an affidavit hence the affidavit cannot be treated as an application and without any specific ground, the petitioner was not entitled for permission to contest the application field by the land lord.

10) Petitioner in conformity with Section 23-C of the Act, was bound to file an application stating and disclosing the facts as would disentitle the landlord from an order for the recovery of possession of the landlord and should have filed an affidavit in support of those facts if he really and bona fidely intended to contest the case and then only Authority could have exercised its jurisdiction regarding accepting or refusing of the application. It is pertinent to note, that no application in accordance with Section 23-C of the Act has been filed. In affidavit a prayer to defend the case has been made, but no grounds as specified in Section 23-C of the Act, have been mentioned as also no such facts as would disentitle the land lord from obtaining an order for the recovery of possession of the accommodation, have been mentioned therein. Learned Authority rightly held that no application for permission to contest the case has been filed and the affidavit filed by the petitioner does not contain sufficient grounds to defend the case.

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11) No other grounds have been raised during argument.

12) The impugned order passed by the Authority does not suffer from any infirmity which may call for interference by this Court under its revisional jurisdiction, hence the revision fails and is accordingly dismissed.

Parties to bear their own costs.

Sd//-
V.K.Shrivastava
Judge

Raju